



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING



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September 1, 2005

**MEMORANDUM**

TO: Intermediate School District and Local Educational Agency Superintendents  
and Special Education Directors, Monitors, and Interested Parties

FROM: Jacquelyn J. Thompson, Ph.D., Director  
Office of Special Education and Early Intervention Services

SUBJECT: Public Agency Obligations under the Individuals with Disabilities Education Act  
of 2004

This memorandum is to inform public agencies of their obligations under the Individuals with Disabilities Education Act (IDEA) of 2004. On July 5, 2004, the Office of Special Education and Early Intervention Services (OSE/EIS) posted updated copies of the Individualized Education Program (IEP) Manual, IEP Forms, Procedural Safeguards, and the Individual Family Service Plan (IFSP) Manual on the Michigan Department of Education (MDE) website. Further updates to the Procedural Safeguards, IEP Forms, and IEP Manual were posted on July 28, 2005. These documents will be revised again after the federal regulations implementing the IDEA are finalized.

The OSE/EIS will be making changes to existing policies, rules, and procedures, as necessary, to bring the documents into compliance with the requirements of the IDEA as soon as possible. During this transition period, **all public agencies responsible for the education of students with disabilities must operate consistent with all requirements of PL 108-446 (IDEA) and applicable regulations.** Below is a list of changes to the statute that became effective July 1, 2005. These topics are highlighted because the rules or policies which are affected by these provisions have yet to be formally changed.

**Surrogate Parents**

A new provision in the IDEA adds specific language regarding students who are wards of the state or are unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act. In the case of a student who is a ward of the state, a surrogate may be appointed by a judge overseeing the student's care, provided that the surrogate meets the requirements defined in the IDEA. In the case of an unaccompanied youth, the local educational agency (LEA) shall appoint a surrogate. The IDEA requires the state to make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.  
(20 U.S.C. 1415 (b)(2)).

OSE/EIS 24-05

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### **Consent for Services**

The IDEA 2004 explicitly states that if a parent refuses to consent to special education services for their child, the public agency shall **not** provide special education to the student. A public agency may **not** use due process to seek to provide services if parents have failed to provide consent. If parents refuse consent for services, the public agency will not be considered to have failed to provide a free appropriate public education (FAPE) to the child, and shall not be required to convene individualized education program team meetings about the child. The IDEA 2004 supersedes Rule 340.1722a(3) which allowed a public agency to request a hearing if a parent refused to consent for programs or services. (20 U.S.C. 1414(a)(1)(D)(ii))

### **Wards of the State**

If a student is a ward of the state and is not residing with his/her parents, 20 U.S.C. 1414(a)(1)(D)(iii) mandates that public agencies make reasonable efforts to obtain informed consent prior to an initial evaluation. The public agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if, despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parents, the rights of the parents have been terminated, or the rights of the parents to make educational decisions have been subrogated by a judge in accordance with state law, and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

### **Specific Learning Disabilities**

LEAs are not required to consider whether a student has a severe discrepancy between achievement and intellectual ability when determining whether a child has a learning disability. An LEA may use a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures. (20 U.S.C. 1414(b)(6))

### **Evaluations Before Change in Eligibility**

An evaluation is not required before terminating a child's eligibility due to graduation with a regular diploma or due to exceeding the age of eligibility for a FAPE. If a child's eligibility ends due to either of these circumstances, the LEA shall provide a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals. (20 U.S.C. 1414(c)(5))

### **Due Process Request and the IEP Form**

In the past, a parent could request a due process hearing by checking a box on the individualized education program. Under the new IDEA, this is no longer sufficient to initiate a hearing. Any party that requests a due process hearing must file a notice to the other party and the state educational agency before a hearing is initiated. (20 U.S.C. 1415(b)(7))

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### **30-Day Timeline**

Please note that Rule 340.1721c, Scheduling individualized education program team meeting; requesting parent participation, remains in effect. Michigan's timeline from "The time from referral or from receipt of parental consent to an initial evaluation to the completion of the individualized education program or the determination of ineligibility shall not be more than 30 school days."

For further explanation or questions, please contact Dr. Joanne Winkelman, Coordinator, Policy and Compliance Program, at (517) 373-1696, or via email at [winkelmanj@michigan.gov](mailto:winkelmanj@michigan.gov).

JJT/JW/sfk